



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 16, 2020


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
	§	
Senior Care Centers, LLC, <i>et al.</i> , ¹	§	Case No. 18-33967 (BJH)
	§	
Reorganized Debtors.	§	(Jointly Administered)
	§	

**STIPULATION AND AGREED ORDER APPROVING APPLICATION
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE
CLAIM OF BERKADIA COMMERCIAL MORTGAGE LLC**

This stipulation and agreed order (this “**Stipulation and Agreed Order**”) is entered into by and between the Reorganized Debtors and Berkadia Commercial Mortgage LLC (“**Berkadia**”, and together with the Reorganized Debtors, collectively, the “**Parties**”).

¹ The Debtors in the Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases, and (II) Granting Related Relief* [Docket No. 569] and may also be found on the Debtors’ claims agent’s website at <https://omnimgt.com/SeniorCareCenters>. The location of the Debtors’ service address is 600 North Pearl Street, Suite 1050, Dallas, Texas 75201.

STIPULATED FACTS

A. On December 4, 2018 (the “**Petition Date**”), the Debtors filed voluntary petitions commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”).²

B. Prior to the Petition Date, the Debtors and Annaly entered into that Master Lease Agreement between Annaly³ and PM Management – Portfolio VI NC, LLC, dated May 11, 2016 (the “**Annaly Master Lease**”). Under the Annaly Master Lease, the Debtors leased certain real property and improvements, comprising five skilled nursing facilities in Texas (the “**Annaly Facilities**”).

C. Berkadia Commercial Mortgage LLC (“**Berkadia**”) and Annaly are parties to certain loans secured by the Annaly Facilities. Such loans are insured by the U.S. Department of Housing and Urban Development (“**HUD**”).

D. The Reorganized Debtors and Berkadia are parties to a number of documents including regulatory agreements and operating agreements (collectively, the “**Berkadia Documents**”). Pursuant to the Berkadia Documents, Berkadia has a security interest in, among other things, accounts receivable generated at the Annaly Facilities.

E. On October 4, 2019, the Court entered the *Memorandum Opinion and Order Granting Debtors’ Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Assume Unexpired Real Property Leases, and (III) Establishing and Authorizing the Debtors to Pay Attendant Cure Amounts* [Docket No. 1983] (the “**Assumption Order**”). Pursuant to the Assumption Order, the Debtors assumed the Annaly Master Lease.

² Certain additional Reorganized Debtors filed voluntary petitions for relief on January 21, 2019 and May 20, 2019.

³ CHI Javelin LLC, CHI Javelin Winters Park LLC, CHI Javelin Denison LLC, CHI Javelin Frisco LLC, CHI Javelin Allen LLC, and CHI Javelin Vista Ridge LLC.

F. On October 25, 2019, the Debtors filed the *Notice of Filing of Solicitation Version of Disclosure Statement for the Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 2094] (the “**Solicitation Notice**”). Attached to the Solicitation Notice as Exhibit A, was the solicitation version of the *Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (as may be further amended, modified, and/or supplemented, the “**Plan**”). On December 13, 2019, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 2376] (the “**Confirmation Order**”).

G. On March 27, 2020 (the “**Effective Date**”), all conditions to the occurrence of the Effective Date set forth in the Plan and Confirmation Order were satisfied or waived in accordance therewith, and the Effective Date of the Plan occurred. On March 30, 2020, the *Notice of (I) Entry of Findings of Fact, Conclusions of Law, and Order Confirming Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, (II) Occurrence of the Effective Date, and (III) Bar Date Notice for Rejection Damages Claims, Administrative Claims and Professional Fee Claims* [Docket No. 2659] (the “**Effective Date Notice**”) was filed.

H. On April 29, 2020, Berkadia filed the *Application for Allowance and Payment of Administrative Expense Claim of Berkadia Commercial Mortgage LLC* [Docket No. 2705] (the “**Application**”). The Berkadia Application asserted an administrative expense claim for \$176,550.25 against the Debtors for Berkadia’s attorneys’ fees during the Chapter 11 Cases.

I. The Parties have resolved their pending disputes, all as set forth below.

STIPULATION

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE PARTIES HEREBY AGREE AND STIPULATE, AND IT IS ORDERED AS FOLLOWS:

1. The foregoing recitals are incorporated herein by reference as if set forth in full herein and are made an express part of this Stipulation and Agreed Order.

2. In full satisfaction of the Application, the Reorganized Debtors shall: (i) pay Berkadia \$66,206.34 (the “**Settlement Amount**”) no later than July 10, 2020 in relation to the Application.

3. Berkadia hereby agrees that it waives its right to assert any Event of Default (as defined in the Berkadia Documents) with respect to:

- a. any amounts for attorneys’ fees and expenses contained in the Application; and
- b. any amounts for attorneys’ fees and expenses incurred after the Effective Date in connection with the Application.

4. Effective as of the entry of this Stipulation and Agreed Order, Berkadia hereby withdraws the Application.

5. The Parties’ rights and obligations under this Stipulation and Agreed Order are conditioned upon this Stipulation and Agreed Order becoming a final order within the meaning of the Bankruptcy Rules.

6. This Stipulation and Agreed Order shall be binding upon, and shall inure to the benefit of each of the Debtors, the Reorganized Debtors, and Berkadia, and all their respective agents, employees, representatives, assigns, successors in interest, and attorneys.

7. This Stipulation and Agreed Order may be executed in multiple counterparts. The Parties agree that their respective signatures will be effective and a counterpart containing an electronic copy of the signature page shall have the same force and effect as an original.

8. Notwithstanding any Bankruptcy Rule or Local Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry

9. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Order.

End of Order

Order submitted by:

POLSINELLI PC

/s/ Liz Boydston

Liz Boydston
State Bar No. 24053684
2950 N. Harwood, Suite 2100
Dallas, Texas 75201
Telephone: (214) 397-0030
Facsimile: (214) 397-0033
lboydston@polsinelli.com

**KILPATRICK TOWNSEND &
STOCKTON LLP**

/s/ James H. Pulliam

James H. Pulliam (Admitted *Pro Hac Vice*)
214 North Tryon Street, Suite 2400
Charlotte, North Carolina 28202-2381
Telephone: (704) 338-5288
Facsimile: (704) 371-8311
jpulliam@kilpatricktownsend.com

-and-

Jeremy R. Johnson (Admitted *Pro Hac Vice*)
Stephen J. Astringer (Admitted *Pro Hac Vice*)
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
Facsimile: (212) 684-0197
jeremy.johnson@polsinelli.com
sastringer@polsinelli.com

Counsel to the Reorganized Debtors

Counsel to Berkadia